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Supreme Court of the United States

October Term, 1956

No. [redacted] 195

IN THE MATTER

of

LONG ISLAND LIGHTING COMPANY, *et al.*

ENNIS M. NICHOLS, *et al.*,

Petitioners,

against

HARRY A. ALKER, *et al.*,

Respondents.

PETITIONERS' REPLY TO THE RESPONDENTS' BRIEF

HAROLD G. ARON,
Attorney for Petitioners.

Supreme Court of the United States

October Term, 1956

No. 1093

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The only difference in principle between the arguments of the parties on the petition for certiorari is that respondents rely upon the maxim quoted in the opinion of the Court of Appeals below:

> "*Interest rei publicae ut litium sit.*"

While the petitioners for the writ rely upon the other maxim commencing with the same words:

> "*Interest rei publicae ne maleficia remanent impunita.*"

Constantly, throughout the many years of this litigation, we have challenged the opposition to cite any reference in the record to establish from the *record* just how,

when, and where it could be established that, as they claimed, the issue of fraud and conspiracy had been ever previously litigated, or could have been litigated.

In the position of being unable to answer this challenge respondents, at p. 3 of their brief, cite from a 1949 brief before the District Court on the enforcement motion.

Respondents' brief (p. 3, footnote 5) asserts that the facts concerning the fraud and conspiracy alleged in the complaint against defendants had all been previously litigated during the reorganization proceeding before the U. S. District Court. Had this been so, a reference to the page, or pages, of the *record* in the reorganization proceeding would have been simple, were it a fact. Instead, respondents refer only to a few quoted words taken (out of all context) from a Brief by one of the then three counsel for the Common Stockholders Committee in 1949, which is not in the record. These words, however, had reference to an entirely different subject in complaining that the then management had ridden roughshod over the interests of the common stockholders in the reorganization proceedings. No charge of any fraud or conspiracy had then been made. Necessarily the quoted words from counsel brief in 1949 could not have been made as to such fraud or conspiracy, for the facts as to such were not uncovered or discovered until more than two years later, in 1952.*

In the course of the argumentation of the 50-page brief submitted in opposition to the motion made by the S. E. C. to obtain an enforcing order from the U. S. District Court, counsel for the Common Stockholders Committee used the few quoted words set forth in the respondents' brief.

1. In respondents' quotation of the word "scheme" from p. iii of the concurring brief, the word has been quoted,

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* As respondents point out, the statement at p. 1 of the Petition that the reorganization occurred on *June 1, 1954* is erroneous. The correct date, of course, was 1950.

without its context. It could not have implied fraud or conspiracy. The full sentence reads:

> "That same management has evaded and circumvented the statutory law of New York for the reorganization of corporations under the supervision of the New York Commission and has gone to the length of misbranding their proposal a consolidation rather than a reorganization to conceal the scheme."

2. As to the use of the words in such brief "management cabal" and "what a tangled web we weave when first we practice to deceive", on pp. X and XI of said brief, there is not even a hint given that fraud and conspiracy is in mind. The complete statements read:

> "On this point, we will stand or fall on the proposition that the S. E. C. cannot respectably argue, much less prove, that there is any basis in law, in fact, in logic, in mathematics, even in numerology, for its allocation of 5.7% to the common stockholders.
>
> "The points sought to be raised by this Appendix are not advanced to make an already unnecessarily involved matter still more intricate. This whole affair illustrates the truth of the old adage—
>
> 'What a tangled web we weave
> when first we practice to deceive.'
>
> Had an obdurate minority management cabal followed the clear course open to it by the long tested and indisputably valid and constitutional statutes of New York, it is safe to say that it would have saved the stockholders well over a million dollars frittered away on legal proceedings in the last five years; have spared the taxpayers of the United States and of the State of New York a much larger amount and this case would not be here to burden this and a half dozen more overburdened courts before it is over."

The respondents' plea that the issues in this action have all been litigated surpasses in incoherence its duplicity. What, with a semblance of truth or common honesty, can support the statement that all of the issues have been litigated, when neither of the concededly identical complaints has ever been answered, no evidence permitted to be received and no pretense of trial or hearing held?

Denial of the allegations of fraud and conspiracy have been contained only in affidavits in motion papers. One cannot confront or cross-examine an affidavit. The only motion ever made by defendants for summary judgment was denied, and yet petitioners have been enjoined from proceeding further in seeking to get to trial. This final barrier has been imposed in violation of due process of law guaranteed to these petitioners by the Constitution.

After more than a decade of defrauding eleven thousand common stockholders, uninformed that in law and fact they owned and controlled the Long Island Lighting Company; after years of tampering with and defrauding the Securities and Exchange Commission; after years of defrauding and cajoling every segment of the Federal Judicature, these defendants, in their panic-stricken efforts to escape answering the Petition; not to mention the Complaint or any one of eight categorical allegations, interrogatories and factual challenges, are in their ruthless and unbroken deceptions and falsifications finally self-snared by their own deviations from and distortions of the record. They stand before this Court stripped of their gold encrusted hypocrisies and financial power, in their outspoken contempt for this "tin cup" committee of small stockholders, revealed as participants in a Kremlin-styled conspiracy, conceived in 1944 by those defendants who appear *pro se* in response to this Petition.

Respectfully submitted.

HAROLD G. ARON,
Attorney for Petitioners.

order herein specifically enjoining the Committee, Ennis M. Nichols and Harold G. Aron, and each of them, from taking further proceedings based on the allegations of their complaints in *Nichols et al. v. Long Island Lighting Co.*, E.D. N.Y. Civil No. 13054 and *Nichols et al. v. Alker et al.*, E.D. N.Y. Civil No. 14890, and said attorneys having appeared in support of said motion, and Harold G. Aron, Esq., Pro Se, and as attorney for the Committee and for Ennis M. Nichols, having appeared and argued in opposition thereto.

Now, upon all of the papers submitted on this motion and upon the proceedings heretofore set forth, and upon the transcript of the argument on this motion (which is annexed hereto as Exhibit A),—the transcript of minutes indicates clearly there is no new or additional evidence of fraud—and the Court having duly considered the matter and being fully advised in the premises, it is hereby.

Ordered that the Common Stockholders Committee of Long Island Lighting Company, Ennis M. Nichols and Harold G. Aron, and each of them, be and they hereby are permanently enjoined and restrained from commencing or prosecuting any action, suit or proceeding, at law or in equity, in any court or before any executive or administrative officer, commission or tribunal, based on the allegations of wrong-doing, fraud or conspiracy, or any of such allegations contained in the complaints in *Nichols et al. v. Long Island Lighting Co.*, E.D. N.Y. Civil No. 13054, and *Nichols et al. v. Alker et al.*, E.D. N.Y. Civil No. 14890, copies of which are annexed hereto as Exhibits B and C, respectively; provided, however, that nothing herein contained shall prevent the Common

Stockholders Committee of Long Island Lighting Company, Ennis M. Nichols and Harold G. Aron, or any of them, from seeking a review of this supplemental order.

By the Court.

/s/ Matthew T. Abruzzo
United States District Judge

Dated October 26, 1956
Brooklyn, New York.